

## Message Text

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ACTION EA-09

INFO OCT-01 EUR-12 ISO-00 CIAE-00 DODE-00 PM-04 H-01  
INR-07 L-03 NSAE-00 NSC-05 PA-01 PRS-01 SP-02  
SS-15 USIA-06 AID-05 EB-07 TRSE-00 OMB-01 XMB-02  
FRB-03 COME-00 EPG-02 /087 W  
-----201112Z 100334 /11

R 200905Z MAY 77  
FM AMCONSUL HONG KONG  
TO SECSTATE WASHDC 4965  
INFO RUMTBK/AMEMBASSY BANGKOK 648 49  
AMEMBASSY KUALA LUMPUR  
AMEMBASSY MANILA  
AMEMBASSY PARIS  
AMEMBASSY SINGAPORE  
AMEMBASSY TOKYO  
AMEMBASSY VIENTIANE

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E.O. 11652: N/A  
TAGS: EINV, EEWT, VN  
SUBJ: VIETNAM'S FOREIGN INVESTMENT CODE,AN ANALYSIS

SUMMARY: A VIETNAMESE FOREIGN INVESTMENT CODE, DRAFT  
COPIES OF WHICH HAVE BEEN CIRCULATING FOR SOME MONTHS,  
HAS FINALLY BEEN APPROVED. UNDER THIS CODE, PROVISIONS  
ARE MADE FOR PRODUCTION SHARING OPERATIONS, JOINT  
VIETNAMESE/FOREIGN VENTURES AND EXPORT ENTERPRISES.  
TRANSFER OF A PERCENTAGE OF PROFITS IS AUTHORIZED AND  
FOREIGN PERSONNEL MAY BE EMPLOYED IN SOME CASES.  
VIRTUALLY ALL IMPORTANT ASPECTS OF THE CODE ARE  
NEGOTIABLE. THE FINAL TEXT, WHICH IS STRUCTURALLY  
THE SAME AS EARLIER DRAFTS, WAS PUBLISHED MINUS  
SEVERAL DRAFT CLAUSES WHICH WOULD HAVE BEEN OFFENSIVE  
TO POTENTIAL INVESTORS. THESE MODIFICATIONS CLEARLY  
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REFLECT VIETNAM'S GREAT DESIRE TO ACHIEVE REPID  
ECONOMIC DEVELOPMENT THROUGH THE HELP OF WESTERN  
INVESTMENT. AN INFORMAL TRANSLATION OF THE COMPLETE  
TEXT OF THE CODE WILL BE REPORTED BY AIRGRAM.  
A COPY OF THE VIETNAMESE TEXT HAS BEEN POUCHED TO  
EA/VLC. END SUMMARY.

1. THE REGULATIONS ON FOREIGN INVESTMENTS IN THE SRV (WHICH IS THE OFFICIAL TITLE CONTAINED IN THE INFORMAL TRANSLATION OF THE CODE OBTAINED IN THE INFORMAL TRANSLATION OF THE CODE OBTAINED BY CONGEN) WAS ENACTED BY DECREE 115/CP OF THE COUNCIL OF MINISTERS ON APRIL 18. THE CODE SETS FORTH THREE POSSIBLE TYPES OF FOREIGN INVESTMENT:  
A. COOPERATION IN PRODUCTION AND SHARING OF PRODUCTS  
B. JOINT VENTURES  
C. PRIVATE ENTERPRISES SPECIALIZING IN PRODUCTION FOR EXPORT  
THE DOCUMENT IS EXPECTED TO BE OFFICIALLY CIRCULATED IN A FEW MONTHS WHEN "NECESSARY CIRCULARS FOR GUIDANCE" HAVE BEEN PREPARED BY THE IMPLEMENTING GOVERNMENT MINISTRIES.

2. IN THE FIRST FORM OF INVESTMENT, PRODUCTION SHARING, THE FOREIGN PARTY INVESTS CAPITAL AND EQUIPMENT AND RECIVES A PART OF THE VENTURE'S OUTPUT. THIS FORM WAS APPARENTLY CONCEIVED WITH THE DEVELOPMENT OF VIETNAM'S NATURAL RESOURCES, ESPECIALLY OIL, IN MIND. A CLAUSE FOUND IN THE DRAFT VERSION, WHICH KEPT THE MANAGEMENT OF SUCH OPERATIONS EXCLUSIVELY IN VIETNAMESE HANDS, HAS BEEN DELETED, SUGGESTING THAT THE VIETNAMESE MIGHT CONSIDER AT LEAST PARTIAL FOREIGN MANAGEMENT. A NEW CLAUSE HAS BEEN ADDED TO THE FINAL TEXT EXEMPTING THE FOREIGN PARTY'S SHARE OF THE OUTPUT FROM EXPORT DUTIES.

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3. THE JOINT VENTURE SCHEME FORESEES THE FOREIGN INVESTMENT, CONSISTING OF FOREIGN EXCHANGE, EQUIPMENT, INDUSTRIAL PROPERTY, ETC., AS BEING AT LEAST 30 PER CENT BUT NO MORE THAN 49 PER CENT OF THE TOTAL VALUE OF THE VENTURE. THESE VENTURES ARE PERMITTED TO MAKE "PROFITS" AND THE FOREIGN INVESTOR MAY TRANSFER ABROAD A YEARLY SHARE OF THE NEXT PROFITS. LIGHT INDUSTRIES SUCH AS TEXTILES, PAPER MILLS OR FOOD PROCESSING ARE PROBABLY CONSIDERED FOR THIS FORM OF INVESTMENT. IN THE DRAFT CODE VERSION, THE FOREIGN INVESTOR WAS RESPONSIBLE FOR THE EXPORT OF PRODUCTION, BUT THIS HAS NOW BEEN AMENDED MAKING BOTH THE GOVERNMENT AND THE FOREIGN INVESTOR RESPONSIBLE. A NEW REQUIREMENT ADDED TO THE FINAL TEXT STATES THAT "EXPANSION PROSPECTS" MUST BE DESCRIBED IN THE STATUTES OF SUCH VENTURES.

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-----230313Z 000755 /62

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C O R R E C T E D C O P Y (PARAS RENUMBERED 4-6 VICE 5-7)

4. THE THIRD CATEGORY, ENTERPIRSES SPECIALIZING  
IN EXPORT PRODUCTION, IS ALSO PROFIT-ORIENTED.  
IN THIS CATEGORY THERE ARE NO SPECIFICATIONS ON  
THE AMOUNT OF EQUITY TO BE HELD BY THE FOREIGN  
OWNERSHIP. UNDER THE NEW CODE, ONLY VENTURES IN  
THIS THIRD CATEGORY ARE SPECIFICALLY AUTHORIZED  
TO EMPLOY FOREIGN TECHNICAL PERSONNEL.A CLAUSE  
IN THE DRAFT VERSION ALLOWING FOREIGN EMPLOYEES TO  
TRANSFER UP TO 50 PER CENT OF THEIR SALARIES HOME  
HAS BEEN DELETED.

5. NATIONALIZATION OF BOTH JOINT VENTURES AND EXPORT  
ENTERPRISES IS ALLOWED UNDER THE CODE BUT COMPENSATION  
WILL BE AT A "REASONABLE PRICE AGREED UPON BY THE  
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TWO SIDES" RATHER THAN "IN THE SPIRIT OF JUSTICE"  
PROVIDED IN THE DRAFT. ONE STRICTER ASPECT OF

THE FINAL CODE SETS INCOME TAX RATES AT "40 PER CENT FOR HIGH TECHNOLOGY ENTERPRISES AND 50 PER CENT FOR OTHERS." THE PROVISIONS IN THE DRAFT VERSION REFERRED TO "30 TO 40 PER CENT" AND "40 TO 50 PER CENT", RESPECTIVELY, FOR THESE TWO GROUPS. A MAJOR IMPROVEMENT IN INVESTMENT PROCEDURES IN THE FINAL TEXT IS THE REMOVAL OF THE PRIME MINISTER FROM THE PROCESS AND THE PLACING OF THE PRIME RESPONSIBILITY ON THE MINISTER OF FOREIGN TRADE. UNDER THIS ARRANGEMENT THE PROCEDURES SHOULD MOVE MORE EFFICIENTLY.

6. THE MOST SIGNIFICANT ADDITION TO THE FINAL CODE IS THE PENULTIMATE CLAUSE, "ARTICLE 26", WHICH PROVIDES "IN SPECIFIC CASES, IF NEED BE, THE SRV GOVERNMENT MAY APPROVE MORE ADVANTAGEOUS TERMS IN FAVOUR OF THE FOREIGN PARTY." IN OTHER WORDS, IF THE GOVERNMENT WANTS THE INVESTOR BADLY ENOUGH IT CAN DISREGARD THE CODE AND NEGOTIATE ANY TERMS IT WISHES. THIS PROVIDES FOR GREAT FLEXIBILITY IN DRAWING UP AGREEMENTS BUT CAN CAUSE CONSIDERABLE PROBLEMS AND DISSATISFACTION IF ONE FOREIGN GROUP LANDS SUBSTANTIALLY BETTER TERMS THAN ANOTHER. WE HAVE NOTED IN EXPORT SALES THAT THE VIETNAMESE HAVE ALREADY GOTTEN THEMSELVES INTO TROUBLE WITH SOME BUSINESS CIRCLES BY ARBITRARILY SHIFTING THEIR PRICES AROUND. IT REMAINS TO BE SEEN IF THEY CAN AVOID THESE SAME DIFFICULTIES IN APPLYING THEIR RATHER FLEXIBLE INVESTMENT CODE. BOTH THE DRAFT AND THE FINAL VERSION ARE VAGUE ABOUT SUCH MATTERS AS MANAGEMENT, FOREIGN STAFF AND REMITTANCE ABROAD OF SALARIES OF FOREIGNERS AND ANY INVESTOR WOULD BE WISE TO CLEARLY DEFINE THESE AREAS OF THE AGREEMENT BEFORE CAPITAL IS COMMITTED. A STERN LIMITED OFFICIAL USE

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WARNING EXISTS IN ARTICLE 16 WHICH STATES THAT "IN CASE OF SERIOUS VIOLATIONS, SUCH AS NON-FULFILLMENT OF CONTRACT WITHOUT LEGITIMATE GROUNDS, THE INVESTMENT LICENSE MAY BE WITHDRAWN WITHOUT ANY COMPENSATION TO THE DEFAULTING PARTY." THIS SHOULD SERVE TO REMIND ALL THAT DESPITE SURFACE APPEARANCES, THEY ARE NOT DEALING WITH A WESTERN LIBERAL ADMINISTRATION. CROSS

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## Message Attributes

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**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
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**Disposition Approved on Date:**  
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**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 22 May 2009  
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**TAGS:** EINV, EEWT, VN  
**To:** STATE  
**Type:** TE  
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**Review Markings:**  
Margaret P. Grafeld  
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